

No. PD-1015-18

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
3/19/2021
DEANA WILLIAMSON, CLERK

Ralph Dewayne Watkins, Appellant

v.

The State of Texas, Appellee

Appeal from Navarro County

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**STATE PROSECUTING ATTORNEY'S
MOTION FOR REHEARING**

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

GROUND FOR REHEARING

This Court directed the court of appeals to consider harm without first addressing error, if any.

In its opinion, this Court interpreted the phrase “material to any matter involved in the action” in TEX CODE CRIM. PROC. art. 36.14(a) to mean “having some logical connection to a fact of consequence.”¹ So construed, this term is “synonymous with ‘relevant’” for the purposes of pretrial disclosure/production.² As applied, this Court held that exhibits used by the State at punishment to prove two prior convictions should have been disclosed pretrial.³ The State takes no issue with either holding.

¹ Slip op. at 50.

² *Id.*

³ *Id.* at 51-52.

However, there is a problem with this Court’s instructions to the court of appeals. In its conclusion, this Court said “[t]he State erred by failing to produce those exhibits prior to trial in violation of Article 39.14(a),” and remanded “for the court of appeals to conduct the proper harm analysis.”⁴ This skips a step: error. “Ordinarily, error occurs only when the trial court makes a mistake.”⁵ The State violated the statute—apparently in good faith—but the real question is whether the trial court abused its discretion by admitting the exhibits notwithstanding.⁶ That was the question addressed by the court of appeals.⁷ Although this Court said “[t]he answer to that question turns upon whether the exhibits [were ‘material’ as construed,]”⁸ what the Court determined was that the court of appeals was not right for the reason it stated. The opinion as a whole suggests no intent to make exclusion the automatic remedy for the mid-trial disclosure of discoverable material.

⁴ *Id.* at 52-53.

⁵ *Darcy v. State*, 488 S.W.3d 325, 328 (Tex. Crim. App. 2016). The exception for when neither the trial court nor defendant had any control over events, *id.*, is inapplicable when the late disclosure can be (and was) addressed mid-trial.

⁶ *See id.* (“Here, any violation of the right to counsel relating to Morris’s note would have been immaterial to appellant’s conviction if the note and the testimony about it had not been admitted into evidence at trial, or if the admission of that evidence were cured in some fashion (via instruction to disregard or a mistrial).”).

⁷ *Watkins v. State*, 554 S.W.3d 819, 820 (Tex. App.—Waco 2018), *rev’d and remanded*, PD-1015-18, 2021 WL 800617 (Tex. Crim. App. Mar. 3, 2021) (“In his first issue, Watkins complains that the trial court erred by admitting exhibits during the punishment phase of his trial that had not been produced by the State prior to trial in violation of Article 39.14(a) of the Code of Criminal Procedure.”).

⁸ Slip op. at 2.

Whether a trial court abuses its discretion by admitting discoverable evidence that was not properly disclosed pretrial may well require consideration of many of the same factors as a harm analysis. Regardless, the analyses are distinct and should remain so. Clarifying this will enhance consideration of the issues on remand.

PRAYER FOR RELIEF

WHEREFORE, the State of Texas prays that the Court of Criminal Appeals amend its opinion to invite the court of appeals to consider error and, if necessary, harm.

Respectfully submitted,

/s/ John R. Messinger

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that according to the WordPerfect word count tool this document contains 532 words.

/s/ John R. Messinger
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of March, 2021, a true and correct copy of the State's Motion for Rehearing has been eFiled and served on the following:

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